

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH

Petitioner,

v.

KIDDIES KOLLEGE and  
LAURA SHUMATE  
Respondents

Case No.: I-02-42042

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**FINAL ORDER**

**I. Introduction**

On December 12, 2002, the Government served a Notice of Infraction upon Respondents Kiddies Kollege and Laura Shumate alleging that they violated 29 DCMR 301.9, which forbids the transfer of a license to operate a child development facility to any person or place without the approval of the Mayor. The Notice of Infraction alleged that the violation occurred on October 29, 2002 at 1130 Varney Street, S.E., and sought a fine of \$500.

Respondents answered with a plea of Deny and I held a hearing on January 31, 2003. Nan Reiner, Esq., represented the Government, accompanied by Pushpa Agarwal, the inspector who issued the Notice of Infraction. Respondent Laura Shumate appeared on her own behalf and on behalf of Respondent Kiddies Kollege. She was accompanied by Hattie Ellison, a teacher at Kiddies Kollege. At the hearing, Respondents moved to amend their plea to Admit with Explanation, and I granted the motion.

Based upon the testimony of the witnesses at the hearing, my evaluation of their credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

Respondents operated a licensed child development facility on East Capitol Street, S.E., (the “East Capitol Street facility”) for many years. Recently, the Department of Human Services (“DHS”), which provides funding for many of the children cared for by Respondents, insisted that Respondents move to another location due to DHS’s concern that the East Capitol Street facility was no longer appropriate. Ms. Shumate conducted an extensive search, and found a location at 1130 Varney Street, S.E., (the “Varney Street facility”) that she considered appropriate. Ms. Shumate testified credibly that she encountered substantial frustrations in arranging for the necessary governmental approvals for the new location, including a certificate of occupancy, and that she had to make many visits to the Department of Consumer and Regulatory Affairs and other agencies in an effort to obtain a certificate of occupancy.

Ms. Shumate knew that she needed a new license to operate a child development facility at the Varney Street address, and she applied for one in July 2002. That same month, Ms. Agarwal conducted a pre-licensing inspection of the premises, and identified certain additional actions that Ms. Shumate needed to take and certain additional information that she needed to submit to the Department of Health before a license could be issued for the new location. Petitioner’s Exhibit (“PX”) 102. Among other things, Respondents needed a fire evacuation plan for the new facility. PX 102. *See* 29 DCMR 330.10. Respondents finally obtained a certificate of occupancy on August 30, 2002, PX 103, and moved to the new location in mid-October. Due

to the frustration of obtaining the other necessary approvals, Ms. Shumate forgot to notify the Department of Health of the move. Respondents began caring for children at the Varney Street facility on or about October 21, 2002.

Ms. Agarwal visited the Varney Street facility on October 29, in response to a report that Respondents had moved their operation. She discovered that Respondents still were missing some items needed for issuance of a license, including a fire evacuation plan. Respondents corrected all the remaining deficiencies promptly, and the Department of Health issued a license for the Varney Street facility on November 1, 2002.

Ms. Shumate candidly admitted that she knew that she needed a license to operate at Varney Street and that she forgot to obtain it. Based on that testimony, I find that Respondents have accepted responsibility for the violation. Respondents have a record of prior violations of the rules governing child development facilities. *DOH v. Kiddies Kollege*, OAH No. I-00-40101 (Final Order, November 3, 2000) (violations of 29 DCMR 316.1 and 326.5).

### **III. Conclusions of Law**

Respondents' plea of Admit with Explanation establishes that they violated 29 DCMR 301.9 on October 29, 2002. Section 301.9 provides:

Any transfer of a license to a person or place without the approval of the Mayor shall cause an immediate forfeiture of that license.

Section 301.9 establishes conditions for forfeiture of a license. The Government, however, is seeking a civil fine, not the forfeiture of Respondents' license. That fine is authorized by 16 DCMR 3222.1(b), which states that a violation of section 301.9 is a class 2 infraction, and describes the nature of the violation as "failure to obtain approval prior to the

transfer of a license or permit.” Section 3222.1(b), therefore, authorizes the imposition of a civil fine in the circumstances described in § 309.1, *i.e.*, transfer of a license to another person or place without the Mayor’s approval.<sup>1</sup> Although the Government may pursue forfeiture of a license if the license is transferred improperly, § 3222.1(b) allows it, in the exercise of its enforcement discretion, to seek a civil fine as an alternate remedy for such a transfer. *See also DOH v. Crystal Pool, Inc.*, OAH No. I-00-10224 at 6-7 (Final Order, January 29, 2001) (similar relationship between 21 DCMR 506.1 and 16 DCMR 3234.2(c)); *DOH v. Checkers Drive-in Restaurant*, OAH No. C-00-10355 at 7-8 (Final Order, July 9, 2002) (similar relationship between 21 DCMR 532.4(c) and 16 DCMR 3234.2(j)).

The authorized fine for a Class 2 infraction is \$500 for a first offense. 16 DCMR 3201. The requirement to obtain approval before transferring a license to a new location is an important measure for ensuring the safety of the children in a child development facility. Because many of the standards governing the operation of a facility are site-specific, a facility’s licensure at one location is not a guarantee that its operations at a new location will be appropriate. For example, in this case, Respondents needed an approved fire evacuation plan, whose details obviously would depend upon specific features of the Varney Street location. Because of the importance of the need for approval before transferring the license to a different location, I will not reduce the fine based on Ms. Shumate’s testimony that the frustrations of dealing with other agencies’ regulatory demands caused her to overlook the need to comply with § 309.1. Respondents have accepted responsibility for the infraction, however, and I will reduce the fine to \$375 in light of that factor.

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<sup>1</sup> Respondents do not dispute that the Mayor’s authority under § 309.1 has been delegated to the Department of Health.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2003:

**ORDERED**, that Respondents, who are jointly and severally liable, shall pay a total of **THREE HUNDRED SEVENTY-FIVE DOLLARS (\$375)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondents fail to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **02/20/03**

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John P. Dean  
Administrative Judge